

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

TeleBEEPER of New Mexico, Inc.  
Licensee of Radio Station WPQN222  
Albuquerque, New Mexico

File Number EB-01-DL-818  
NAL/Acct. No. 200232500006  
FRN: 0001-6111-10

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: July 9, 2002**

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find that TeleBEEPER of New Mexico, Inc. (TeleBEEPER), licensee of Wireless Radio Services Station WPQN222, willfully violated Section 1.903(a) of the Commission's Rules ("Rules") by failing to operate in accordance with its station authorization.<sup>1</sup> We conclude that TeleBEEPER of New Mexico, Inc. is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

**II. BACKGROUND**

2. On December 6, 2001, in response to a complaint of interference, an agent from the FCC Enforcement Bureau's Dallas Field Office ("Dallas Office") located the source of interference to be a radio paging service transmitting on the frequency 929.2375 MHz from Franklin Mountain, El Paso, Texas. A search of the FCC license database showed an authorization issued to TeleBEEPER under callsign WPQN222 authorizing operation in the El Paso-Albuquerque market area. However, TeleBEEPER's authorization contained a special condition requiring TeleBEEPER to file an application with the Commission to modify its license in order to add any transmitter site located within 120 km (75 miles) of the U.S.-Mexican border within 30 days of commencing such operation. FCC records showed no such application for TeleBEEPER's operation on Franklin Mountain. Still on December 6, 2001, the agent interviewed by telephone TeleBEEPER's owner, Mr. Dallas Vanderhoof, who stated that TeleBEEPER owned the radio paging service operating on 929.2375 MHz on Franklin Mountain.

3. On April 29, 2002, the Dallas Office issued to TeleBEEPER an Official Letter of Inquiry ("LOI") requesting TeleBEEPER to provide the date they commenced operation on Franklin Mountain in El Paso, Texas, and copies of any documentation submitted to modify TeleBEEPER's license to operate at that location. The Dallas Office received TeleBEEPER's reply to the LOI on May 31, 2002. TeleBEEPER stated they had commenced operation on Franklin Mountain in or about September, 2000,

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<sup>1</sup> 47 C.F.R. § 1.903(a).

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and had failed to file an application for that operation.

### III. DISCUSSION

4. Section 1.903(a) of the Rules sets forth that Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. A special condition attached to TeleBEEPER's license WPQN222 requires TeleBEEPER to notify the Commission of each transmitter site located within 120 km (75 miles) of the U.S. – Mexican border. Specifically, for each site within the border area, the licensee must file an application to modify its license in order to add the new transmitter to their authorization within 30 days of commencing operation. On December 6, 2001, TeleBEEPER operated a paging service from Franklin Mountain in El Paso, Texas on 929.2375 MHz approximately 2.5 miles from the border with Mexico. TeleBEEPER admits this operation commenced in or about September 2000. The required application for the subject site had not been submitted as of December 6, 2001.

5. Based on the evidence before us, we find that on December 6, 2001, TeleBEEPER of New Mexico, Inc., willfully<sup>2</sup> violated Section 1.903(a) of the Rules by failing to notify the Commission of each transmitter site located within 120 km (75 miles) of the U.S. – Mexican border within 30 days of commencing operation.

6. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for failure to file required forms or information is \$3,000.<sup>3</sup> Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>4</sup> Considering the entire record and applying the statutory factors listed above, this case warrants a \$3,000 forfeiture.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>6</sup> TeleBEEPER of New Mexico, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> 47 C.F.R. § 1.80(b)(4).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

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willful violation of Section 1.903(a) of the Commission's Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability*, TeleBEEPER of New Mexico, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

13. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to TeleBEEPER of New Mexico, Inc., 4604 McLeod NE, Albuquerque, New Mexico 87109.

FEDERAL COMMUNICATIONS COMMISSION

Jerry M. Montgomery  
Acting District Director, Dallas Office  
Enforcement Bureau

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<sup>7</sup> See 47 C.F.R. § 1.1914.